

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
BASIC RESEARCH, L.L.C.,)	
A.G. WATERHOUSE, L.L.C.,)	
KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	PUBLIC VERSION
DENNIS GAY,)	
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
)	
Respondents.)	

COMPLAINT COUNSEL’S REQUESTS FOR ADMISSIONS

Pursuant to RULE OF PRACTICE 3.32 and the Court’s August 11th *Scheduling Order*,

Complaint Counsel hereby request that Respondents admit the truth of the statements set forth below within fifteen (15) days of service of these *Requests for Admissions*.

DEFINITIONS

- 1) **“Challenged products”** means the products identified as Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptoprin, Anorex, and PediaLean in the *Complaint* issued by the Federal Trade Commission in the above-captioned matter, both individually and collectively.

- 2) **“Communication(s)”** includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person, by telephone, or electronically, as well as all letters, memoranda, telegrams, cables, and other writings or **documents**.

- 3) **“Corporate Respondents”** means Respondents Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., both individually and collectively, and **including** all of their operations under assumed names. This term also includes the entity known as American Phytotherapy Research Laboratory identified in the *Complaint* in this matter.

4) **“Dissemination schedule”** includes, but is not limited to, the following: (a) for radio, audio, television, and video **promotional materials**, the date, time of day, location and station name; (b) for product packaging, the names of distributors and retailers to whom the packaging or other **promotional material** was transmitted, the date of transmittal, and the number of pieces transmitted; (c) for printed **promotional materials**, the name and date of the publication or place in which the **promotional material** appeared; and (d) for Internet materials, the date that the **promotional material** was first placed on the Internet, the date (if any) that it was removed from the Internet, and the number of “hits” that the advertisement registered.

5) **“Document”** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, package insert, sticker, web page, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, **communications**, electronic mail, electronically stored data, computer (including handheld computer) material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

6) **“Each”** and **“any”** include **“all,”** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or **documents** that might otherwise be construed to be outside its scope.

7) **“Includes”** or **“including”** means **“including but not limited to,”** so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.

8) **“Individual Respondents”** means Respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, both individually and collectively.

9) **“Market research”** means all information referring or relating to testing, measuring or assessing consumers’ or individuals’ interpretation of, understanding of or reaction to a draft, proposed, or final **promotional material**, proposed advertising text, copy or creative strategy or platform, product category, product, entity or information conveyed in an advertisement, **including** consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

10) **“Or”** includes **“and,”** and **“and”** includes **“or,”** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or documents

that might otherwise be construed to be outside its scope.

11) “**Person**” or “**Persons**” means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

12) “**Promotional material**” shall mean any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, stickers, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

13) “**Requests for Production**” means any and all *Requests for Production of Documentary Materials and Tangible Things* directed to the **Respondents** in the above-captioned matter.

14) “**Respondent(s)**” means all **Corporate Respondents** and all **Individual Respondents**, both individually and collectively, and all of their affiliates and operations under assumed names.

15) “**You**” or “**Your**” refers to **Respondents**, both individually and collectively, unless otherwise noted.

16) The use of the singular includes the plural, and the plural includes the singular.

17) The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

18) The spelling of a name shall be construed to include all similar variants thereof.

INSTRUCTIONS

1) For the purposes of this *Request for Admissions*, each paragraph constitutes a separate statement and is to be admitted or denied separately.

2) Pursuant to RULE 3.32, you must specifically admit or deny the requested admission, or set forth in detail the reasons why you cannot admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the requested admission, you must specify what portion of it is true and qualify or deny the remainder. In addition, you may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to

enable you to admit or deny.

- 3) RULE 3.32 (b) requires that your responses be sworn to under oath.
- 4) It is not grounds for objection that the requested admission relates to opinions of fact or the application of law to fact. Your belief that the matter on which an admission is requested presents a genuine issue for trial does not, on that ground alone, provide a valid basis for objection.
- 5) Unless otherwise specified, the relevant time period is from January 1, 1998, to the date of full and complete compliance with this *Request for Admissions*.

ADMISSION REQUESTS

Complaint counsel request the following admissions:

- 1) During the time period in which the **challenged products** have been advertised and sold, Dennis Gay has held the position of President-Manager-Chief Executive Officer of the **Corporate Respondents**.
- 2) During the time period in which the **challenged products** have been advertised and sold, Dennis Gay has held the position of President of D.G. Enterprises, Inc.
- 3) D.G. Enterprises, Inc. is Manager-Member-Partner of the **Corporate Respondents**.
- 4) Dennis Gay has supervised other **persons** who have engaged in activities **relating to** the promotion and/or sale of the **challenged products**.
- 5) Dennis Gay has supervised Daniel B. Mowrey's activities **relating to** the promotion and/or sale of the **challenged products**.
- 6) Dennis Gay has supervised Mitchell K. Friedlander's activities **relating to** the promotion and/or sale of the **challenged products**.
- 7) During the time period in which the **challenged products** have been advertised and sold, Dennis Gay has been aware of the contents of the **challenged products' promotional materials**.
- 8) During the time period in which the **challenged products** have been advertised and sold, Dennis Gay has been aware of the substantiation for the **challenged products' promotional materials**.
- 9) D.G. Enterprises, Inc. is Manager-Member-Partner of Bydex Management, LLC.

- 10) Bydex Management, LLC pays **persons** who perform work for the **Corporate Respondents including** but not limited to activities **relating to** the promotion and sale of the **challenged products**.
- 11) **REDACTED**
- 12) Daniel B. Mowrey is Director of Scientific Affairs for the **Corporate Respondents**.
- 13) Daniel B. Mowrey has not participated, in any way, in clinical trials on weight loss.
- 14) Daniel B. Mowrey has not participated, in any way, in clinical trials on fat loss.
- 15) During the time period in which the **challenged products** have been advertised and sold, Daniel B. Mowrey has been aware of the contents of the **challenged products' promotional materials**.
- 16) On September 6, 2000, Dr. Bruce Frome, M.D., wrote Daniel B. Mowrey to state, with respect to **promotional materials** for Dermalin, that "[t]he claims you are making for the fat reducing gel are illegal." (SDT 00186.)
- 17) During the time period in which the **challenged products** have been advertised and sold, Daniel B. Mowrey has been aware of the substantiation for the **challenged products' promotional materials**.
- 18) **REDACTED**
- 19) **REDACTED**
- 20) **Respondents** used Daniel B. Mowrey to endorse the **challenged products** because they believed that his endorsement would lend credibility to their claims.
- 21) Mitchell K. Friedlander wrote the ad copy for the **promotional materials** for the **challenged products**.
- 22) Mitchell K. Friedlander approved the **promotional materials** for the **challenged products**.
- 23) During the time period in which the **challenged products** have been advertised and sold, Mitchell K. Friedlander has been aware of the contents of the **challenged products' promotional materials**.
- 24) During the time period in which the **challenged products** have been advertised and sold, Mitchell K. Friedlander has been aware of the substantiation for the **challenged products'**

promotional materials.

25) **REDACTED**

26) **Respondents** have sold (or have caused others to sell) the **challenged products** directly to consumers in numerous states of the United States.

27) **Respondents'** building at 5742 West Harold Gatty Dr., Salt Lake City, Utah 84116 houses telemarketing facilities in which dozens of telephone agents receive telephone orders from consumers.

28) **Promotional materials** for the **challenged products** have appeared in numerous states of the United States.

29) **Respondents, including** their affiliates or others acting on their behalf, have placed **promotional materials** for the **challenged products** with print magazines circulated in numerous states of the United States.

30) **REDACTED**

31) **REDACTED**

32) **Respondents, including** their affiliates or others acting on their behalf, have placed **promotional materials** for Leptoprin with cable television networks shown in numerous states of the United States.

33) **REDACTED**

34) **REDACTED**

35) **REDACTED**

36) **REDACTED**

37) **REDACTED**

38) **REDACTED**

39) **REDACTED**

40) **REDACTED**

41) **REDACTED**

42) **REDACTED**

43) **REDACTED**

44) **REDACTED**

45) **REDACTED**

46) **REDACTED**

47) **REDACTED**

48) **REDACTED**

49) **REDACTED**

50) **REDACTED**

51) **REDACTED**

52) **REDACTED**

53) On December 13, 2000, counsel for the Pennington Biomedical Research Center wrote Daniel B. Mowrey to request that he “immediately delete the use of all of the names (Pennington and Drs. Greenway and Bray) in conjunction with advertising or any other promotion” for Dermalin. (SDT 00389.)

54) On January 22, 2003, counsel for the Pennington Biomedical Research Center wrote **Respondents** to “demand that you and your affiliates immediately cease and permanently desist from any further use of the names Pennington Biomedical Research Center, Dr. George Bray and Dr. Frank Greenway in conjunction with the advertisement in any medium of Söväge Breast Augmentation Serum or any other products.” (SDT 00391.)

55) **REDACTED**

56) **REDACTED**

57) **REDACTED**

58) **REDACTED**

59) The National Advertising Division of the Council of Better Business Bureaus reviewed **promotional materials** for PediaLean “because the product was marketed to a potentially

vulnerable target audience—parents of overweight and obese children.”

60) The National Advertising Division of the Council of Better Business Bureaus administratively closed its PediaLean case because “the advertising was currently undergoing government review.”

**ADDITIONAL REQUESTS FOR ADMISSION FOR PURPOSES
OF AUTHENTICITY AND ADMISSIBILITY OF EXHIBITS**

Pursuant to the Court’s *Scheduling Order*, these *Additional Requests for Admission for Purposes of Authenticity and Admissibility of Exhibits* do not count against Complaint Counsel’s numeric limit on *Requests for Admissions*. See Order, Aug. 11, 2004, at 5.

1) **REDACTED**

2) **REDACTED**

3) **REDACTED**

4) **REDACTED**

5) **REDACTED**

6) **REDACTED**

7) **REDACTED**

8) **REDACTED**

9) **REDACTED**

10) **REDACTED**

11) **REDACTED**

12) **REDACTED**

13) Exhibit A to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic photocopy of **promotional material** that Respondents have disseminated or have caused to be disseminated.

14) Exhibit B to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic hard copy of Internet website **promotional material** that

Respondents have disseminated or have caused to be disseminated.

15) Exhibit C to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic photocopy of product packaging that Respondents have disseminated or have caused to be disseminated.

16) Exhibit D to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic photocopy of **promotional material** that Respondents have disseminated or have caused to be disseminated.

17) Exhibit E to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic hard copy of Internet website **promotional material** that Respondents have disseminated or have caused to be disseminated.

18) Exhibit F to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic photocopy of **promotional material** that Respondents have disseminated or have caused to be disseminated.

19) Exhibit G to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic hard copy of Internet website **promotional material** that Respondents have disseminated or have caused to be disseminated.

20) Exhibit H to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic copy of video or television **promotional material** that Respondents have disseminated or have caused to be disseminated.

21) Exhibit H-1 to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic transcript of video or television **promotional material** that Respondents have disseminated or have caused to be disseminated.

22) Exhibit I to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic hard copy of Internet website **promotional material** that Respondents have disseminated or have caused to be disseminated.

23) Exhibit J to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic hard copy of Internet website **promotional material** that Respondents have disseminated or have caused to be disseminated.

24) Exhibit K to the *Complaint* issued against **Respondents** by the Commission on June 15, 2004, is a genuine and authentic photocopy of **promotional material** that Respondents have disseminated or have caused to be disseminated.

25) Exhibit L to the *Complaint* issued against **Respondents** by the Commission on June 15,

2004, is a genuine and authentic hard copy of Internet website **promotional material** that Respondents have disseminated or have caused to be disseminated.

Respectfully submitted,



Laureen Kapin (202) 326-3237
Joshua S. Millard (202) 326-2454
Robin M. Richardson (202) 326-2798
Laura Schneider (202) 326-2604

Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dated: November 8, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2004, I caused *Complaint Counsel's Requests for Admissions (Public Version)* to be served and filed as follows:

one (1) electronic copy via email and one (1) paper copy
by first class mail to the following persons:

Stephen E. Nagin
Nagin Gallop Figuerdo P.A.
3225 Aviation Ave.
Miami, FL 33133-4741
(305) 854-5353
(305) 854-5351 (fax)
snagin@ngf-law.com
For Respondents

Jeffrey D. Feldman
FeldmanGale
201 S. Biscayne Blvd., 19th Fl.
Miami, FL 33131-4332
(305) 358-5001
(305) 358-3309 (fax)
JFeldman@FeldmanGale.com
For Respondents

Richard D. Burbidge
Burbidge & Mitchell
215 S. State St., Suite 920
Salt Lake City, UT 84111
(801) 355-6677
(801) 355-2341 (fax)
rburbidge@burbidgeandmitchell.com
For Respondent Gay

**A.G. Waterhouse, LLC,
Klein-Becker USA, LLC,
Nutrasport, LLC, Sovage
Dermalogic Laboratories,
LLC, and BAN, LLC**

Ronald F. Price
Peters Scofield Price
340 Broadway Centre
111 East Broadway
Salt Lake City, UT 84111
(801) 322-2002
(801) 322-2003 (fax)
rpf@psplawyers.com
For Respondent Mowrey

Mitchell K. Friedlander
5742 West Harold Gatty Dr.
Salt Lake City, UT 84116
(801) 517-7000
(801) 517-7108 (fax)
Respondent Pro Se
mkf555@msn.com



COMPLAINT COUNSEL